(13) AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1194/1989

APPLICANT	State of Madhya Pradesh (now Chhattisgarh)
	VERSUS
NON-APPLICANT	Vijay Kumar, aged about 40 years, Son of Banwarilal Jain, Food Inspector, R/o Chikhli, Rajnandgaon, Tahsil and District – Rajnandgaon (C.G.)

Appearance:

Shri Arun Sao, Govt. Advocate for the State/appellant.

Shri P. Diwakar, Sr. Advocate with Shri R.K. Jain, Counsel for the respondent.

JUDGMENT
(22.03.2007)

SUNIL KUMAR SINHA, J.

1. On a leave being granted under Section 378(3) of the Code of Criminal Procedure, the State has filed this appeal against the judgment of acquittal dated 8th of June 1989 passed in Special Case No.7/87 by the Special Judge, Rajnandgaon (M.P.).

2. The case of the prosecution is that in the year 1986, the respondent was posted as Food Inspector, Dongargarh, and was a public servant for the purposes of Sections 5(1) (d) and 5 (2) of the Prevention of Corruption Act (for short "the Act"). The complainant namely Bhuwanlal (PW-1) was a milk vendor. On 20.06.1986, he made a complaint to the Superintendent of Police (Special Police Establishment), Raipur, alleging that the respondent had called him 2-3 times in his house at Dongargarh and he demanded Rs.300/- from him making a threat that if the amount is not paid to him, he would collect the sample of milk. On the said report, a trap was organized

and the trap party, consisting of Inspector – G.P. Tripathi (PW-9), Naib Tehsildar – J.M. Shukla (PW-2), Superintendent Land Record – A.K. Khan and Constable – B. Laxmaiya (PW-6), made a trap while giving Rs.300/- as the illegal gratification to the respondent by Bhuwanlal (PW-1). It is stated that the currency notes for Rs.300/- were treated with phenolphthalein powder and were handed over to the complainant for giving it to the respondent, which, according to the prosecution, was handed over to him by Bhuwanlal and when a search of the house, after such giving and taking, was made by the trap party, the currency notes were found on the top of the Almirah inside the house of the respondent. After completion of the formalities of phenolphthalein test etc., the investigation was completed and then after obtaining a sanction from the Government under Section 6(1) (c) of the Act, for prosecution of the respondent/accused, charge sheet was filed against him.

3. At the trial, as stated above, charges were framed under Section 5(1) (d) read with Section 5 (2) of the Act to which the respondent denied, therefore, the evidence of prosecution witnesses were recorded and after completion of the trial, the respondent was acquitted.

4. The Special Court acquitted the respondent mainly on the ground that the prosecution could not establish that the respondent by use of corrupt and illegal means or by abusing his position as a public servant, obtained illegal gratification of Rs.300/- from the complainant. The Special Court disbelieved the testimony of Bhuwanlal (PW-1) on various grounds. The first ground for disbelieving his testimony was the material contradictions in his evidence as indicated vide para 15 of the impugned judgment. The two contradictions are – (i) though in his complaint this witness has stated that he was selling milk at the relevant time, but in his evidence he denied that he was selling milk during that period; (ii) in his evidence, he had

stated that the accused first met with him on 18/6/86 when the demand of money was made, but in his police case diary statement, he had stated that accused had met him 2 or 3 months before the date of trap. The Special Court took the view that if the accused had really met with him 2 or 3 months before the date of trap, he would have not kept silence all this time and would have reported the matter earlier, therefore, the version of Bhunwanlal (PW-1) that the accused had met with him and demanded money becomes doubtful. The Special Court further held that on the evidence of this witness, it appears that on the date of trap, he had reached the house of the respondent, entered straight in the house and came out from the house immediately within a few seconds, however, in para 73 of the deposition of this witness, it comes that in the room, he sat on a bench lying in the room and accordingly it was held that in 2 seconds, it was not possible for a man to go and come back from the house after giving bribe to a person. The Special Court further held that in para 60 of the deposition of this witness, he had stated that the respondent met him outside his house, whereas, this fact was not incorporated in his case diary statement nor the fact that respondent had asked him to sit on the bench was incorporated therein. The Special Court also observed that Bhuwanlal (PW-1) had contended that at the time of trap, the respondent was present in his drawing room all alone and he gave money to him, which he kept on the top of the Almirah, where a register was also lying and in the said situation, it appears more suspicious as to what made the accused to put the currency notes on the top of the almirah and not to keep it in his pocket or inside the almirah. Taking all this circumstances about the conduct of this witness, Bhuwanlal (PW-1), the Special Court held that all these circumstances raise a suspicion about his claim that the accused after

receiving the currency notes from him kept them on the top of the Almirah.

5. The version of Bhunwanlal (PW-1) has also been tested in light of the evidence of other witnesses of trap party and ultimately, after giving reasons for disbelieving the testimony of this witness, it has been held by the Special Court that firstly the circumstances, which led to trap are suspicious and the factum of handing over the money to the accused is also suspicious and finally, it was held, while concluding point no.1, that it has not been proved that accused /respondent obtained Rs.300/- or any other amount from Bhunwanlal (PW-1) as illegal gratification.

6. The Apex Court held in the matter of **Budh Singh and others vs. State of U.P. (2006) 9 S.C.C. 731**, vide para 9, that in a matter of appeal against acquittal, the High Court does not ordinarily set aside a judgment of acquittal in a case where two views are possible, although the view of the Appellate Court is a more probable one. However, while dealing with a judgment of acquittal, it is free to consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. It is also entitled to consider as to whether in arriving at a finding of fact, the trial Court has failed to take into consideration admissible evidence and has taken into consideration evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of the scrutiny of the Appellate Court.

7. It was further held by the Apex Court in the matter of **V.N. Ratheesh vs. State of Kerala AIR 2006 S.C. 2667** that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further

strengthened by acquittal. The Apex Court said that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. The Apex Court further said that the paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilt is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the Appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The Apex Court referred to the decisions rendered in the matter of **Bhagwan Singh and others vs. State of Madhya Pradesh (2002 (2) Supreme 567)**. It was further held that the principle to be followed by Appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. The Apex Court also referred to many decisions on this point, which are **Shivaji Sahabrao Bobade and Anr. V. State of Maharashtra (AIR 1973 SC 2622), Ramesh Babulal Doshi v. State of Gujarat (1996 (4) Supreme 167), Jaswant Singh v. State of Haryana (2000 (3) Supreme 320), Raj Kishore Jha v. State of Bihar and others (2003 (7) Supreme 152), State of Punjab vs. Karnail Singh (2003 (5) Supreme 508) and State of Punjab v. Pohla Singh and Anr. (2003 (7) Supreme 17).**

8. If we examine the facts and circumstances of this case in light of the principles laid down by the Apex Court in the cases

referred to above, firstly, it would appear that the view taken by the Special Court that the testimony of Bhuwanlal (PW-1) appears to be untrustworthy does not appear to be completely unreasonable, hence, the same can be said to a probable view which may be one of the possible views, which, the Special Court has adapted. Moreover, it also does not appear to me a case, in which, either admissible evidence is ignored or a case where interference is required to prevent the miscarriage of justice. There are also no compelling and substantial reasons to interfere with such a finding recorded by the trial Court, when it does not appear to be clearly unreasonable particularly when no relevant and convincing materials have been unjustifiably eliminated in the process of appreciation for arriving at a just and proper decision.

9. In the opinion of this Court, the Special Court has taken a view and has recorded a finding, which appears to be one of the possible views which could have been taken by a Court of law in the facts and circumstances of this case and I do not find any reason to interfere with such a finding recorded by the trial Court in a judgment which was delivered by it as back as in the year 1989 for the alleged offence said to have been committed in the year 1986.

10. There is no merit in the appeal filed by the State. The same deserves to be dismissed and is accordingly dismissed. The judgment of acquittal passed by the Special Court is confirmed.

Sd/-
SUNIL KUMAR SINHA
Judge

Shyna/Rao